

**Rule 1007. Lists, Schedules and Statements; Time Limits**

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2           (m) *Infants and Incompetent Persons.* If the debtor

3           knows that a person on the list of creditors or schedules is an

4           infant or incompetent person, the debtor also shall include the

5           name, address, and legal relationship of any person upon

6           whom process would be served in an adversary proceeding

7           against the infant or incompetent person in accordance with

8           Rule 7004(b)(2).

Subdivision (m) is added to enable the person required to mail notices under Rule 2002 to mail them to the appropriate guardian or other representative when the debtor knows that a creditor or other person listed is an infant or incompetent person.

\*New material is underlined; matter to be omitted is lined through.

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The proper mailing address of the representative is determined in accordance with Rule 7004(b)(2), which requires mailing to the person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

### CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made.

#### **Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee**

1 \* \* \* \* \*

2 (c) *Content of Notice.*

3 \* \* \* \* \*

4 (3) Notice of Hearing on Confirmation When Plan  
5 Provides for an Injunction. If a plan provides for an  
6 injunction against conduct not otherwise enjoined under  
7 the Code, the notice required under Rule 2002(b)(2)  
8 shall:

9                   (A) include in conspicuous language (bold,  
10                   italic, or underlined text) a statement that the plan  
11                   proposes an injunction;

12                   (B) describe briefly the nature of the injunction;  
13                   and

14                   (C) identify the entities that would be subject to  
15                   the injunction.

16   \* \* \* \* \*

17                   ~~(g) *Addresses of Notices.* All notices required to be~~  
18                   ~~mailed under this rule to a creditor, equity security holder, or~~  
19                   ~~indenture trustee shall be addressed as such entity or an~~  
20                   ~~authorized agent may direct in a filed request, otherwise, to~~  
21                   ~~the address shown in the list of creditors or the schedule,~~  
22                   ~~whichever is filed later. If a different address is stated in a~~  
23                   ~~proof of claim duly filed, that address shall be used unless a~~  
24                   ~~notice of no dividend has been given.~~

25                   (g) *Addressing Notices.*

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26               (1) Notices required to be mailed under Rule 2002  
27               to a creditor, indenture trustee, or equity security holder  
28               shall be addressed as such entity or an authorized agent  
29               has directed in its last request filed in the particular case.  
30               For the purposes of this subdivision —

31               (A) a proof of claim filed by a creditor or  
32               indenture trustee that designates a mailing address  
33               constitutes a filed request to mail notices to that  
34               address, unless a notice of no dividend has been  
35               given under Rule 2002(e) and a later notice of  
36               possible dividend under Rule 3002(c)(5) has not  
37               been given; and

38               (B) a proof of interest filed by an equity  
39               security holder that designates a mailing address  
40               constitutes a filed request to mail notices to that  
41               address.

42           (2) If a creditor or indenture trustee has not filed a  
43           request designating a mailing address under  
44           Rule 2002(g)(1), the notices shall be mailed to the  
45           address shown on the list of creditors or schedule of  
46           liabilities, whichever is filed later. If an equity security  
47           holder has not filed a request designating a mailing  
48           address under Rule 2002(g)(1), the notices shall be  
49           mailed to the address shown on the list of equity security  
50           holders.

51           (3) If a list or schedule filed under Rule 1007  
52           includes the name and address of a legal representative of  
53           an infant or incompetent person, and a person other than  
54           that representative files a request or proof of claim  
55           designating a name and mailing address that differs from  
56           the name and address of the representative included in  
57           the list or schedule, unless the court orders otherwise,  
58           notices under Rule 2002 shall be mailed to the

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59 representative included in the list or schedules and to the  
60 name and address designated in the request or proof of  
61 claim.

62 \* \* \* \* \*

COMMITTEE NOTE

Subdivision (c)(3) is added to assure that parties given notice of a hearing to consider confirmation of a plan under subdivision (b) are given adequate notice of an injunction provided for in the plan if it would enjoin conduct that is not otherwise enjoined by operation of the Code. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

The notice requirement of subdivision (c)(3) is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 2002(c)(3) would not apply because that conduct would be enjoined under § 524(a)(2) upon the debtor's discharge. But if a plan provides that creditors will be enjoined from asserting claims against persons who are not debtors in the case, the notice of the confirmation

hearing must include the information required under Rule 2002(c)(3) because that conduct would not be enjoined by operation of the Code. *See* § 524(e).

The requirement that the notice identify the entities that would be subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the notice may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient for the notice to identify the entities as "all creditors of the debtor" and for the notice to be published in a manner that satisfies due process requirements.

Subdivision (g) has been revised to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a mailing address, the last paper filed determines the proper address. The amendments also clarify that a request designating a mailing address is effective only with respect to a particular case.

Under Rule 2002(g), a duly filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5). A duly filed proof of interest is considered a request designating a mailing address of an equity security holder.

Rule 2002(g)(3) is added to assure that notices to an infant or incompetent person under this rule are mailed to the appropriate guardian or other legal representative. Under Rule 1007(m), if the debtor knows that a creditor is an infant or incompetent person, the debtor is required to include in the list and schedule of creditors the name and address of the person upon whom process would be served in an adversary proceeding in accordance with Rule 7004(b)(2). If the

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infant or incompetent person, or another person, files a request or proof of claim designating a different name and mailing address, the notices would have to be mailed to both names and addresses until the court resolved the issue as to the proper mailing address.

The other amendments to Rule 2002(g) are stylistic.

### CHANGES MADE AFTER PUBLICATION AND COMMENTS

In Rule 2002(c)(3), the word “highlighted” was replaced with “underlined” because highlighted documents are difficult to scan electronically for inclusion in the clerks’ files. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of any injunction provided for in a plan are substantive matters beyond the scope of the rules.

In Rule 2002(g), no changes were made.



**Rule 3016. Filing of Plan and Disclosure Statement in  
a Chapter 9 Municipality and or Chapter 11  
Reorganization Cases Case**

\* \* \* \* \*

(c) *Injunction Under a Plan.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.

## COMMITTEE NOTE

Subdivision (c) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, are given adequate notice of the proposed injunction. The validity and effect of any injunction are substantive law matters that are beyond the scope of these rules.

Specific and conspicuous language is not necessary if the injunction contained in the plan is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 3016(c) would not apply because that conduct would be enjoined nonetheless under § 524(a)(2). But if a plan provides that creditors will be permanently enjoined from asserting claims against

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persons who are not debtors in the case, the plan and disclosure statement must highlight the injunctive language and comply with the requirements of Rule 3016(c). *See* § 524(e).

The requirement in this rule that the plan and disclosure statement identify the entities that would be subject to the injunction requires reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the plan and disclosure statement may describe them by class or category. For example, it may be sufficient to identify the subjects of the injunction as "all creditors of the debtor."

### CHANGES MADE AFTER PUBLICATION AND COMMENTS

The word "highlighted" in the parenthesis was replaced with "underlined" because highlighted documents are difficult to scan electronically for inclusion in the clerks' files. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of any injunction provided for in a plan are substantive matters beyond the scope of the rules. Other stylistic changes were made to the Committee Note.

#### **Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality ~~and~~ or Chapter 11 Reorganization ~~Cases~~ Case**

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\* \* \* \* \*

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(f) Notice and Transmission of Documents to Entities

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Subject to an Injunction Under a Plan. If a plan provides for

4     an injunction against conduct not otherwise enjoined under  
5     the Code and an entity that would be subject to the injunction  
6     is not a creditor or equity security holder, at the hearing held  
7     under Rule 3017(a), the court shall consider procedures for  
8     providing the entity with:

9             (1) at least 25 days' notice of the time fixed for  
10            filing objections and the hearing on confirmation of the  
11            plan containing the information described in Rule  
12            2002(c)(3); and

13            (2) to the extent feasible, a copy of the plan and  
14            disclosure statement.

#### COMMITTEE NOTE

Subdivision (f) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, and who will not receive the documents listed in subdivision (d) because they are neither creditors nor equity security holders, are provided with adequate notice of the proposed injunction. It does not address any substantive law issues relating to the validity or effect of any injunction provided under a plan, or any due process or other constitutional issues relating to notice. These issues are beyond the scope of these rules and are left for judicial determination.

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This rule recognizes the need for adequate notice to subjects of an injunction, but that reasonable flexibility under the circumstances may be required. If a known and identifiable entity would be subject to the injunction, and the notice, plan, and disclosure statement could be mailed to that entity, the court should require that they be mailed at the same time that the plan, disclosure statement and related documents are mailed to creditors under Rule 3017(d). If mailing notices and other documents is not feasible because the entities subject to the injunction are described in the plan and disclosure statement by class or category and they cannot be identified individually by name and address, the court may require that notice under Rule 3017(f)(1) be published.

### CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made in the text of the proposed amendments since publication. The Committee Note was revised to put in a more prominent position the statement that the rule does not address related substantive law issues which are beyond the scope of the rules.

#### **Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case**

- 1 \* \* \* \* \*
- 2 (c) *Order of Confirmation.*
- 3 (1) The order of confirmation shall conform to the
- 4 appropriate Official Form ~~and~~ . If the plan provides for an
- 5 injunction against conduct not otherwise enjoined under

6        the Code, the order of confirmation shall (1) describe in  
7        reasonable detail all acts enjoined; (2) be specific in its  
8        terms regarding the injunction; and (3) identify the  
9        entities subject to the injunction.

10                    (2) Notice of entry of the order of confirmation notice  
11                    of entry thereof shall be mailed promptly as provided in  
12                    Rule 2002(f) to the debtor, the trustee, creditors, equity  
13                    security holders, ~~and~~ other parties in interest, and, if  
14                    known, to any identified entity subject to an injunction  
15                    provided for in the plan against conduct not otherwise  
16                    enjoined under the Code.

(3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).

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### COMMITTEE NOTE

Subdivision (c) is amended to provide notice to an entity subject to an injunction provided for in a plan against conduct not otherwise enjoined by operation of the Code. This requirement is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

The requirement that the order of confirmation identify the entities subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the order may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient to identify the entities as "all creditors of the debtor."

### CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made in the text of the proposed amendments. The Committee Note was revised to put in a more prominent position the statement that the validity and effect of injunctions provided for in plans is beyond the scope of the rules.

#### **Rule 9006. Time**

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\* \* \* \* \*

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(f) *Additional Time after Service by Mail or Under Rule*

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5(b)(2)(C) or (D) F. R. Civ. P. When there is a right or

4 requirement to do some act or undertake some proceedings  
 5 within a prescribed period after service of a notice or other  
 6 paper and the notice or paper other than process is served by  
 7 mail or under Rule 5(b)(2)(C) or (D) F. R. Civ. P., three days  
 8 shall be added to the prescribed period.

9 \* \* \* \* \*

#### COMMITTEE NOTE

Rule 5(b) F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7005, is being restyled and amended to authorize service by electronic means — or any other means not otherwise authorized under Rule 5(b) — if consent is obtained from the person served. The amendment to Rule 9006(f) is intended to extend the three-day "mail rule" to service under Rule 5(b)(2)(D), including service by electronic means. The three-day rule also will apply to service under Rule 5(b)(2)(C) F. R. Civ. P. when the person served has no known address and the paper is served by leaving a copy with the clerk of the court.

#### CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made.

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**Rule 9020. Contempt Proceedings**

1       Rule 9014 governs a motion for an order of contempt  
2       made by the United States trustee or a party in interest.

3       ~~(a) *Contempt Committed in Presence of Bankruptcy*~~  
4       ~~*Judge.* Contempt committed in the presence of a bankruptcy~~  
5       ~~judge may be determined summarily by a bankruptcy judge.~~  
6       ~~The order of contempt shall recite the facts and shall be~~  
7       ~~signed by the bankruptcy judge and entered of record.~~

8       ~~(b) *Other Contempt.* Contempt committed in a case or~~  
9       ~~proceeding pending before a bankruptcy judge, except when~~  
10      ~~determined as provided in subdivision (a) of this rule, may be~~  
11      ~~determined by the bankruptcy judge only after a hearing on~~  
12      ~~notice. The notice shall be in writing, shall state the essential~~  
13      ~~facts constituting the contempt charged and describe the~~  
14      ~~contempt as criminal or civil and shall state the time and~~  
15      ~~place of hearing, allowing a reasonable time for the~~  
16      ~~preparation of the defense. The notice may be given on the~~



17 ~~court's own initiative or on application of the United States~~  
18 ~~attorney or by an attorney appointed by the court for that~~  
19 ~~purpose. If the contempt charged involves disrespect to or~~  
20 ~~criticism of a bankruptcy judge, that judge is disqualified~~  
21 ~~from presiding at the hearing except with the consent of the~~  
22 ~~person charged.~~

23 ~~(c) *Service and Effective Date of Order; Review.* The~~  
24 ~~clerk shall serve forthwith a copy of the order of contempt on~~  
25 ~~the entity named therein. The order shall be effective 10 days~~  
26 ~~after service of the order and shall have the same force and~~  
27 ~~effect as an order of contempt entered by the district court~~  
28 ~~unless, within the 10-day period, the entity named therein~~  
29 ~~serves and files objections prepared in the manner provided~~  
30 ~~in Rule 9033(b). If timely objections are filed, the order shall~~  
31 ~~be reviewed as provided in Rule 9033.~~

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32 ~~(d) *Right to Jury Trial*. Nothing in this rule shall be~~  
33 ~~construed to impair the right to jury trial whenever it~~  
34 ~~otherwise exists.~~

COMMITTEE NOTE

The amendments to this rule cover a motion for an order of contempt filed by the United States trustee or a party in interest. This rule, as amended, does not address a contempt proceeding initiated by the court sua sponte.

Whether the court is acting on motion under this rule or is acting sua sponte, these amendments are not intended to extend, limit, or otherwise affect either the contempt power of a bankruptcy judge or the role of the district judge regarding contempt orders. Issues relating to the contempt power of bankruptcy judges are substantive and are left to statutory and judicial development, rather than procedural rules.

This rule, as amended in 1987, delayed for ten days from service the effectiveness of a bankruptcy judge's order of contempt and rendered the order subject to de novo review by the district court. These limitations on contempt orders were added to the rule in response to the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which provides that bankruptcy judges are judicial officers of the district court, but does not specifically mention contempt power. *See* 28 U.S.C. § 151. As explained in the committee note to the 1987 amendments to this rule, no decisions of the courts of appeals existed concerning the authority of a bankruptcy judge to punish for either civil or criminal contempt under the 1984 Act and, therefore, the rule as amended in 1987

"recognizes that bankruptcy judges may not have the power to punish for contempt." Committee Note to 1987 Amendments to Rule 9020.

Since 1987, several courts of appeals have held that bankruptcy judges have the power to issue civil contempt orders. *See, e.g., Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d 609 (5th Cir. 1997); *In re Rainbow Magazine, Inc.*, 77 F.3d 278 (9th Cir. 1996). Several courts have distinguished between a bankruptcy judge's civil contempt power and criminal contempt power. *See, e.g., Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d at 613, n. 3 ("[a]lthough we find that bankruptcy judge's [sic] can find a party in civil contempt, we must point out that bankruptcy courts lack the power to hold persons in criminal contempt."). For other decisions regarding criminal contempt power, *see, e.g., In re Ragar*, 3 F.3d 1174 (8th Cir. 1993); *Matter of Hipp, Inc.*, 895 F.2d 1503 (5th Cir. 1990). To the extent that Rule 9020, as amended in 1987, delayed the effectiveness of civil contempt orders and required de novo review by the district court, the rule may have been unnecessarily restrictive in view of judicial decisions recognizing that bankruptcy judges have the power to hold parties in civil contempt.

Subdivision (d), which provides that the rule shall not be construed to impair the right to trial by jury, is deleted as unnecessary and is not intended to deprive any party of the right to a jury trial when it otherwise exists.

#### CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made in the text of the proposed amendments. Stylistic changes were made to the Committee Note.

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## Rule 9022. Notice of Judgment or Order

(a) *Judgment or Order of Bankruptcy Judge.*  
Immediately on the entry of a judgment or order the clerk shall serve a notice of entry ~~by mail~~ in the manner provided ~~by Rule 7005~~ in Rule 5(b) F. R. Civ. P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

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## COMMITTEE NOTE

Rule 5(b) F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7005, is being restyled and amended to authorize service by electronic means — or any other means not otherwise authorized under Rule 5(b) — if consent is obtained from the person

served. The amendment to Rule 9022(a) authorizes the clerk to serve notice of entry of a judgment or order by electronic means if the person served consents, or to use any other means of service authorized under Rule 5(b), including service by mail. This amendment conforms to the amendments made to Rule 77(d) F.R. Civ. P.

CHANGES MADE AFTER PUBLICATION AND COMMENTS

No changes were made.